



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: May 30, 2024**

**Docket: LR24019**

**Type: Rental Appeal**

INDEXED AS: *Bonnell and Boateng v. 101728 PEI Inc.*

Order No: LR24-28

**BETWEEN:**

Shyanne Bonnell and Bernard Boateng (the "Tenants")

**Appellant**

**AND:**

101728 PEI Inc. dba Bakers Lighthouse Motel (the "Landlord")

**Respondent**

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## ORDER

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Panel Members:

M. Douglas Clow, Vice-Chair  
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

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Commission Clerk

Island Regulatory and Appeals Commission

## A. INTRODUCTION

1. This appeal was heard by the Commission on April 2, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenancy was terminated in accordance with the provisions of the *Residential Tenancy Act* and that the Tenants were required to vacate.

## B. BACKGROUND

2. This appeal concerns Unit 2, 802 Water Street East, Summerside, PE (the “Rental Unit”). The parties entered into a verbal month-to-month tenancy agreement for the Rental Unit on November 10, 2023.<sup>1</sup> Rent is \$1,240.00 due on the 10<sup>th</sup> day of each month. A security deposit of \$1,000.00 was required; however, the evidence of the parties is that only \$500.00 was paid.
3. In Order LD24-079, dated March 8, 2024, the Rental Office heard an application by the Landlord seeking an order directing the Tenants to vacate the Rental Unit and ordering the Landlord be put into possession of the Rental Unit. The Landlord’s application was accompanied by an Eviction Notice (Form 4(A)) dated January 11, 2024. The reasons listed on the Eviction Notice were:
  - (a) You have not paid your rent in the amount of \$1,240.00.
  - (b) You have not paid the security deposit.
  - (c) You are repeatedly late in paying rent.
4. By the date of the hearing before the Rental Office on February 22, 2024, the Tenants had paid a portion of the outstanding rent for January 2024, but also owed rent for February 2024. The total balance outstanding was \$2,280 (\$540 for January 2024 + \$1,240 for February 2024 + \$500 outstanding security deposit).
5. At the hearing before the Rental Office on February 22, 2024, the Tenants indicated that they would be able to pay their outstanding arrears within two weeks of the hearing. The Landlord’s representative, Victor Zhou (“Mr. Zhou”), agreed that if the Tenants paid the full outstanding balance of the arrears within two weeks, the Landlord would withdraw the application. Based on this agreement, the Residential Tenancy Officer gave the Tenants two weeks to pay the outstanding amount by March 7, 2024.
6. On March 8, 2024, the Landlord provided evidence of a payment from the Tenants of only \$1,780. Accordingly, Order LD24-079 was issued on March 8, 2024, and found that the Landlord’s Eviction Notice was valid and allowed the application. The tenancy was terminated effective March 15, 2024, at 5:00 p.m.
7. On March 14, 2024 the Commission received a Notice of Appeal from the Tenants.

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<sup>1</sup> Order LD24-079 states that the tenancy agreement between the parties started on December 10, 2023; however, the evidence of the parties before the Commission establishes that the tenancy agreement more likely started on November 10, 2023.

8. The appeal was heard on April 2, 2024 by way of telephone conference call. One of the Tenants, Shyanne Bonnell (“Ms. Bonnell”) was present and represented both Tenants. Mr. Zhou represented the Landlord.

### **C. DISPOSITION**

9. The appeal is dismissed and Rental Office Order LD24-079 is confirmed.

### **D. EVIDENCE OF THE PARTIES**

10. The Tenants’ Notice of Appeal states that they are appealing Order LD24-079 on the basis that they paid the Landlord the amount owed for outstanding rent, which was \$1,780, and that the Landlord agreed the remaining security deposit (\$500) could be paid on a later date.
11. There was little in the way of documentary evidence before the Commission. The evidence included a photograph of a handwritten note from one of the Tenants stating “*I promise to pay the remaining \$540 for December Tuesday*”. There was also a photograph of the Landlord’s application posted to a door.
12. At the hearing, Ms. Bonnell testified that on March 5, 2024, the Tenants paid the sum of \$1,780.00 to Mr. Zhou and asked Mr. Zhou if he would wait for the remaining \$500.00. Ms. Bonnell testified that Mr. Zhou stated in response “no problem”. She also advised that March rent was paid on March 5, 2024 and thus they are paid up until April 12, 2024.
13. Mr. Zhou testified that the Tenants owe \$500.00 for the security deposit and he never agreed to further delay payment beyond March 7, 2024. He testified that, other than the security deposit, the tenants are paid up to March 10, 2024; however, they have not paid rent for the period March 10 to April 9, 2024.
14. Ms. Bonnell requested an opportunity to file evidence of e-transfers and receipts following the hearing. The Commission agreed to this and granted the Landlord a right to respond.
15. On April 3, 2024 the Tenants filed screenshots of various receipts and e-transfers to Mr. Zhou as follows:
  - receipt for \$1140.00 paid in cash, dated November 10, 2023 and an e-transfer of the same date for \$100.00;
  - e-transfer dated December 13, 2023 for \$700.00;
  - e-transfer dated January 4, 2024 for \$180.00;
  - e-transfer dated January 5, 2024 for \$360.00;
  - e-transfer dated January 31, 2024 for \$300.00;
  - e-transfer dated February 20, 2024 for \$400.00; and
  - e-transfer dated March 5, 2024 for \$1,780.00.
16. The Tenants also stated that there was a receipt which they could not find, which they recall was dated October 8, 2023 for the sum of \$1740.00, which would be \$1240.00 for October 2023 plus \$500.00 security deposit.

17. On April 4, 2024 Mr. Zhou filed his response on behalf of the Landlord. He provided a spreadsheet of payment details from the Tenants that lines up with the Tenants' evidence of payment amounts and dates. However, he pointed out that the Tenants had submitted two screenshots of the same e-transfer for January 31, 2024.
18. Mr. Zhou also stated that the Tenants did not move into the Premises until November 10, 2023, and provided text messages to establish someone else was living in the Premises during October 2023. He maintained that the security deposit had not been paid in full and that rent was outstanding for March 10 to April 9, 2024.

## **E. ANALYSIS**

19. On this appeal, the Commission is asked to determine whether Order LD24-079 of the Rental Office erred in concluding that the Tenants be ordered to vacate the Rental Unit.

### **Preliminary Comment**

20. As a preliminary matter, we wish to address the deeming provisions of the *Residential Tenancy Act* that are engaged in this case. Subsections 60(4) and 61(5) and (6) effectively state that where a tenant does not "dispute" a notice of termination by filing an application with the Rental Office, they are *deemed* to accept the notice of termination and shall vacate the rental unit accordingly. In Order LD24-079, the Residential Tenancy Officer found that the Tenants were deemed to have accepted the Eviction Notice.

21. However, In Order LR23-79, the Commission found that a notice of termination was invalid even though the tenant had not filed an application disputing the notice. The Commission stated in part as follows:

*11. Upon receiving the eviction notice from the Landlord, the Tenants did not file a section 75 application using a Form 2A to challenge the termination of the tenancy agreement. Subsection 61.(6) of the Act provides that unless a tenant disputes a notice of termination within 10 days of receipt, the tenant is deemed to accept the termination and must vacate.*

*12. The Director's form for a notice of eviction is not clear in terms of how a Tenant goes about disputing a notice of eviction. The Tenants did not vacate and from that fact alone, together with the materials filed and evidence given, it is clear that the Tenants dispute the eviction. Further, the Director and the Commission have in the past considered the merits of the eviction upon considering an application for possession, where a Tenant challenges the validity of an eviction. Therefore, the Commission will look at the circumstances of the eviction to determine if sufficient grounds were present to justify an eviction.*

22. The standard wording in the Eviction Notice used by the Landlord in this case also does not state the procedure the Tenants would need to follow to dispute the Eviction Notice. The standard wording only states: "*Tenants have ten (10) days to dispute this Eviction Notice.*" The form does not have a section for the particulars of termination. Therefore, following Order LR23-79, the Commission will consider whether there are sufficient

grounds were present to justify eviction in accordance with the *Residential Tenancy Act* in the present case.

23. As previously noted, the Eviction Notice (Form 4(A)) delivered by the Landlord to the Tenants, dated January 11, 2024, listed the following reasons:

(a) You have not paid your rent in the amount of \$1,240.00.

(b) You have not paid the security deposit.

(c) You are repeatedly late in paying rent.

24. The Landlord's application for possession of the Rental Unit, which was filed with the Rental Office on February 7, 2024, stated the following reasons:

Today is February 4, 2024. The Tenant only payed [sic] \$300 rent on January 31, 2024, for the month from January 10, 2024, to February 9, 2024. The Tenant is repeatedly late in paying rent. The Tenant only payed [sic] \$500 damage deposit on agreed \$1000. The Tenant must go.

#### **Section 60 – Landlord's notice for non-payment of rent**

25. First, section 60 of the *Residential Tenancy Act* permits a landlord to end a tenancy if rent is unpaid after the day it is due by giving notice in accordance with the *Act*.

26. The Commission is satisfied that the undisputed evidence of the parties establishes that on the date the Landlord delivered the Eviction notice, the Tenants had not paid rent for January 2024. Further, by the date of the hearing before the Rental Office, the Tenants had only made a partial payment of \$700 towards the overdue rent. The amount outstanding for January 2024 was \$540.

27. By the date Order LD24-079 was issued, the Tenants had paid the remaining \$540 for January 2024, and \$1,240 for February 2024.

28. Despite the Tenants paying the full outstanding amount by the date of the Director's Order, the Landlord's Eviction Notice was valid on the date it was issued. We are satisfied that on January 11, 2024, the Tenants had not paid rent for January 2024. The *Residential Tenancy Act* specifically gives tenants 10 days to pay overdue rent after receiving an Eviction Notice (section 60(4)(a)). In this case, the Landlord waited almost two months for full payment and had to bring an application before the Rental Office to get all of January's rent. Therefore, the Commission is satisfied that the Landlord has established that January's rent was unpaid the date it was due, and not paid within 10 days of the Eviction Notice, and the Landlord's termination on this ground is allowed.

29. We also wish to comment on the outstanding rent for March 2024. At the hearing, the Landlord submitted that rent was not paid for March 2024. The Tenants, however, were under the impression that they had paid for March 2024. Based on the evidence of payments submitted by the both parties, we are satisfied that the Tenants had paid rent up to and including February 2024, and that rent for March 2024 was not paid.

### **Subsection 61(1)(a) – Landlord’s notice for non-payment of security deposit**

30. Next, subsection 61(1)(a) of the *Residential Tenancy Act* permits a landlord to end a tenancy where the tenant does not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement.
31. The evidence before the Commission is that the parties entered into a verbal tenancy and there is no specific evidence as to a date the security deposit was required to be paid. However, based on the evidence and submissions of the parties, we are satisfied that the Landlord intended to collect a security deposit from the Tenants in the amount of \$1,000, and that the Tenants were aware of this.
32. Based on the evidence, we are satisfied that the security deposit was not paid in full.
  - (a) First, when asked by the Panel at the hearing whether the Tenants had ever paid the remaining amount of the security deposit, Ms. Bonnell said they did not.
  - (b) Second, evidence of receipts and e-transfers provided by the Tenants following the Commission hearing do not indicate that any amount for a security deposit was paid.
  - (c) Finally, while the Tenants contend that they had paid the Landlord \$1740.00 on October 8, 2023, the Landlord disputes this evidence and the Tenants did not provide any corroborating evidence to prove their claim (such as evidence of an e-transfer, cheque, receipt, or even a cash withdrawal). In addition, the Landlord has provided information which suggests that the tenancy did, in fact, commence on November 10, 2023. In the absence of more reliable evidence to support an October payment, the Commission can only conclude that the Tenants are mistaken about an October payment.
33. For these reasons, the Commission is satisfied that the Landlord has established that the Tenants did not pay the security deposit within 10 days of the date it is required to be paid under the tenancy agreement and the Landlord’s termination on this ground is allowed.

### **Subsection 61(1)(b) – Landlord’s notice for repeatedly late rent payments**

34. Finally, subsection 61(1)(b) permits a landlord to end a tenancy where the tenant is repeatedly late paying rent.
35. The parties did not provide any testimony or submissions at the hearing with respect to this ground of termination.
36. Based on the evidence before the Commission, the Tenants lived in the Rental Unit since November 10, 2023. The evidence of receipts and e-transfers provided by the Tenants following the Commission hearing demonstrates that the Tenants were late in paying rent in December, January and February.
37. In Order LR23-66 the Island Regulatory and Appeals Commission (“the Commission”) stated:

*The Commission notes that the Act provides that a Landlord may, under section 61(1)(b), evict a tenant who is repeatedly late paying rent. It is therefore in the Landlord's discretion whether to evict and so long as the Landlord proves that the Tenant was repeatedly late in paying rent, and that the Notice was served, then the eviction will stand. While a landlord may seemingly tolerate late payment for some time, the Act permits an eviction based on repeated late payment of rent and no warning is required.*

38. In the present case, the Commission is satisfied that the Landlord has provided sufficient evidence to establish that the Tenants were late in paying rent in December 2023 and January 2024. Further, this pattern continued into February 2024. By the time the Landlord issued the Eviction Notice, the Tenants' rent was late two out of three months they had occupied the Rental Unit. For these reasons, in this particular case, the Landlord's termination for repeatedly late rent payment is allowed.

## **F. CONCLUSION**

39. The appeal is dismissed. Rental Office Order LD24-079 is confirmed. The Tenancy agreement is terminated effective Friday, June 14, 2024, at 5:00 p.m. The Tenants and all occupants shall vacate the Premises by that date and time.

40. The Tenants owe the Landlord all outstanding rent until the date of termination, being June 14, 2024. Based on the evidence presented to the Commission, we calculate that the total amount of rent from March 10, 2024, to June 14, 2024, would be:

• March 10 to April 9 =	\$1,240.00
• April 10 to May 9 =	\$1,240.00
• May 10 to June 9 =	\$1,240.00
• June 10 to June 14 =	<u>\$ 206.67<sup>2</sup></u>
• Total =	<b>\$3,926.67</b>

41. **However**, if the Tenants have paid to the Landlord any amount of rent for the period from March 10, 2024, to June 14, 2024, since the date of the hearing, that amount is to be deducted from the total amount owing.

42. The Landlord is reminded that they per section 40 of the *Residential Tenancy Act*, they have 15 days from the date the tenancy agreement terminates to return any security deposit to the Tenants or make an application to the Director under the *Act* claiming against the security deposit.

## **IT IS ORDERED THAT**

- 1. The appeal is dismissed.**
- 2. Order LD24-079 is confirmed subject to the termination date being varied to June 14, 2024.**

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<sup>2</sup> (\$1,240.00/30 days) x 5 days = \$206.67

3. The Tenancy agreement is terminated effective Friday, June 14, 2024, at 5:00 p.m. The Tenants and all occupants shall vacate the Premises by that date and time.
4. The Tenants shall pay the Landlord rent for the period from March 10, 2024, to June 14, 2024, in the amount of \$3,926.67, subject to any adjustments for rent paid by the Tenants from the date of the hearing to the date of this Order.
5. The Tenants shall pay the outstanding amount to the Landlord by June 10, 2024.
6. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Residential Tenancy Act.

**DATED** at Charlottetown, Prince Edward Island, 30<sup>th</sup> day of May, 2024.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)  
M. Douglas Clow, Vice Chair

(sgd. Kerri Carpenter)  
Kerri Carpenter, Commissioner

#### **NOTICE**

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.